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6 IN THE SUPERIOR COURT

7 STATE OF ARIZONA, COUNTY OF YAVAPAI

8 STATE OF ARIZONA,

9 Plaintiff,

10 vs.

11 JAMES ARTHUR RAY,

12 Defendant.

V1300CR201080049

STATE'S RESPONSE TO  
DEFENDANT'S MOTION IN LIMINE No. 4  
TO EXCLUDE EVIDENCE OF (a) MR.  
RAY'S POST-SWEAT LODGE CONDUCT  
AND (b) ACTS OR OMISSIONS OF JRI  
EMPLOYEES AND VOLUNTEERS

(The Honorable Warren Darrow)

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14  
15 The State of Arizona, through undersigned counsel, hereby requests that the Court deny  
16 Defendant's Motion in Limine (No. 4) to Exclude Evidence of (a) Mr. Ray's Post Sweat Lodge  
17 Conduct and (b) Acts or Omissions of JRI Employees. The following Memorandum of Points and  
18 Authorities supports this Response.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 The standard governing the admissibility of evidence is set forth in Rules 401, 402, 403 and  
21 404 of the Arizona Rules of Evidence. Rule 401 defines "relevant evidence" as evidence "having any  
22 tendency to make the existence of any fact that is of consequence . . . more probable or less probable  
23 than it would be without the evidence." *State v. Oliver*, 158 Ariz. 22, 28, 760 P.2d 1071 (1988).  
24 (*emphasis added*) This standard of relevance is not particularly high. *Id.* Rule 402 provides that all  
25 relevant evidence is admissible unless that evidence is excludable on some other grounds. Pursuant  
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1 to Rule 403, some relevant evidence "may be excluded if its probative value is substantially  
2 outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by  
3 considerations of undue delay, waste of time, or needless presentation of cumulative evidence."  
4 (*emphasis added*) Rule 404(b) provides for the admission into evidence of other acts to prove a  
5 defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or  
6 accident or to complete the story.

7  
8 **I. Evidence of Defendant's conduct following the sweat lodge ceremonies is admissible to  
9 prove Defendant's knowledge, his requisite mental state, and to complete the story.**

10 Defendant argues that all his conduct immediately following the sweat lodge ceremonies  
11 year after year is generically irrelevant and inadmissible. Examples of evidence Defendant seeks  
12 to exclude are: (1) Defendant's reaction in 2005 when he learned Amayra Hamilton had called  
13 911; (2) Defendant's failure to follow up on the medical reasons for Daniel Pfankuch's physical  
14 distress in the 2005 sweat lodge ceremony; and (3) Defendant's act of leaving the area of the  
15 sweat lodge ceremony in 2005. Although Defendant cites no other examples in his motion of  
16 evidence he seeks to exclude, he makes the statement that "the State's disclosures are replete with  
17 similar opinions and comments by witnesses about Mr. Ray's alleged post sweat lodge comments  
18 and statements." *Defendant's Motion*, p. 2. Citing Rules 401, 403 and 404 of the Arizona Rules of  
19 Evidence, Defendant argues the only reason the State seeks to admit this evidence is to  
20 demonstrate the Defendant's character as callous and therefore the evidence is inadmissible.

21  
22 The State does not seek to admit the evidence to prove Defendant has a callous character  
23 or that he acted callously; indeed, the State agrees that such a purpose would be impermissible.  
24 The evidence Defendant seeks to preclude is clearly relevant to show Defendant's knowledge, his  
25 requisite mental state, and to complete the story.  
26

1       **A. Defendant's conduct following the 2009 and prior sweat lodge ceremonies is**  
2       **relevant to show knowledge of the physical distress of the sweat lodge participants**  
3       **and to prove the requisite mental state of "reckless."**

4       Defendant has argued that he could not have known about the distress of the sweat lodge  
5 participants because of his practice of leaving the scene of the sweat lodge ceremonies shortly  
6 after their conclusion. Notwithstanding this assertion, Defendant now moves to preclude any  
7 evidence relating to his conduct following the 2009 and the prior sweat lodge ceremonies. While  
8 the State agrees with Defendant and this Court that this evidence is not admissible to demonstrate  
9 that Defendant is a callous individual, Defendant's conduct following all of the sweat lodge  
10 ceremonies is clearly relevant to prove the requisite mental state for the crime of manslaughter.

11       A person commits manslaughter if he recklessly causes the death of another person.  
12 A.R.S. § 13-1103(A)(1). A person acts "recklessly" when he "is aware of and consciously  
13 disregards a substantial and unjustifiable risk that the result will occur or that the circumstance  
14 exists." A.R.S. § 13-105.10(c). "The risk must be of such nature and degree that disregard of such  
15 risk constitutes a gross deviation from the standard of conduct that a reasonable person would  
16 observe in the situation." *Id.*

17       It is undisputed that the sweat lodge ceremony as conducted at Spiritual Warrior was  
18 completely under the control of Defendant down to the last detail. Starting in 2003, Defendant  
19 described his sweat lodge as more intense than any other sweat lodge ceremony. Defendant  
20 reportedly wanted his ceremony hotter, longer and larger than any other sweat lodge. This  
21 intensity was a trademark of Defendant's events and allowed him to market and charge almost  
22 \$10,000 for a participant to attend the Spiritual Warrior event.

23       Defendant was in total control of the heat within the sweat lodge. Defendant called for the  
24 hot rocks, and Defendant alone determined how many would be added at the beginning of every  
25  
26

1 round. Defendant was also aware that participants in the sweat lodge would experience medical  
2 distress. Year after year, in his presentation prior to every sweat lodge ceremony, Defendant tells  
3 the participants that they may vomit and or pass out and may experience an "altered state" of  
4 consciousness. Vomiting, passing out and "altered consciousness" are clearly signs of medical  
5 distress.<sup>1</sup> Defendant knows these conditions may occur because, in fact, they have occurred at his  
6 events, but tells participants that this is normal.

7  
8 In her interview of January 14, 2010, Defendant's Director of Operations, Megan  
9 Fredrickson, explained to Detective Diskin why she wasn't concerned when she witnessed  
10 participants who were passed out following the 2009 sweat lodge ceremony:

11 **Det. Diskin:** In prior sweat lodges, prior to the sweat lodge in 2009, did  
12 you ever have a concern about what was causing people to pass out?

13 **Megan:** I didn't really have a concern because again *James would tell*  
14 *participants from the front of the room that it's a possibility that you could pass*  
15 *out and then James was there after the lodge when people were passed out* and  
16 there was, I mean there was never a call for emergency help or call for a doctor or  
17 anything like that. It was let's, you know care for them until they come back  
18 around.

19 **Det. Diskin:** Do you think there should have been a call to a doctor, to  
20 EMS, to 911?

21 **Megan:** Based on what I knew at the time no, I didn't think that there  
22 needed to be *because my understanding was that James knew that this could*  
23 *happen* and when it did then we took care of them and made them comfortable and  
24 made sure that you know they had blankets and water and until they came back  
25 around.

26 Transcript of Interview of Megan Fredrickson, 1/14/10 at 36. (*emphasis added*)

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<sup>1</sup> Both Dr. Lyon and Dr. Fischione have described the symptoms of heat stroke as including "vomiting and an altered mental status." See Exhibit A, Excerpt from Transcript of Interview of Dr. Fischione, 6/17/10 at 28:12-23; Exhibit B, Excerpt from Transcript of Interview of Dr. Lyon, 6/17/10 at 16:18-19.

1 Given the above facts, the evidence that Defendant consciously choose to ignore and  
2 downplay the health and distress of the participants both during the sweat lodge ceremony and  
3 after they exited the sweat lodge is relevant to the "reckless" mental state to prove manslaughter.

4 In addition to seeking a general ruling prohibiting the admission of all of Defendant's  
5 conduct following the 2009 and prior sweat lodge ceremonies, Defendant specifically seeks to  
6 exclude evidence relating to the 2005 sweat lodge ceremony. Clearly the events following the  
7 2005 sweat lodge ceremony, including Defendant's arguments with Amayra Hamilton, are  
8 pertinent to prove (1) Defendant knew adverse medical effects could occur by participation in the  
9 ceremony, (2) failed to take any action to prevent them from reoccurring in the 2009 ceremony,  
10 and (3) even worse, told participants the effects were normal and they would not die.

11 The State reiterates that this was Defendant's event. The sweat lodge as controlled by  
12 Defendant was his own creation. Defendant boasted about the fact that his ceremony was hotter  
13 and more intense than other sweat lodge ceremonies. The fact that a participant of a prior sweat  
14 lodge had to be transported to the hospital and Defendant never attempted to determine why is  
15 extremely relevant to the reckless mental state of Defendant. What reasonable person takes  
16 another individual, places them into a situation where, as a result of being in the situation, the  
17 individual is transported via ambulance to a hospital, and then does not make any effort to  
18 determine why? Or, even worse, having failed to determine why the individual required  
19 emergency medical care, what reasonable person then continues to place hundreds of other  
20 participants in exactly the same situation, year after year. Clearly this evidence is admissible to  
21 prove the requisite mental state of "reckless."

22 "[A]bsent a person's outright admission regarding his state of mind, his mental state must  
23 necessarily be ascertained by inference from all relevant surrounding circumstances." *In re*  
24

1 *William G.*, 192 Ariz. 208, 213, 963 P.2d 287, 292 (App. 1997). Defendant's actions before,  
2 during and after the 2009 and the previous sweat lodge events are all relevant to the requisite  
3 mental state for the crime of manslaughter and Defendant's motion to preclude any of his actions  
4 should be denied.

5 **B. Defendant's post sweat lodge statements and actions are relevant to complete the**  
6 **story to the jury.**

7 Defendant's actions following the sweat lodge ceremony are relevant to complete the  
8 story for the jury and necessary to ensure that the jury considers the evidence in the context of the  
9 entire event. Defendant is asking this Court to limit the State's evidence to such an extent that the  
10 State's case ends the moment Defendant emerges from the sweat lodge. The State cannot  
11 accurately present the facts of this case to the jury without including the post sweat lodge actions  
12 and statements of the Defendant. The sweat lodge ceremony did not end the minute Defendant  
13 exited the sweat lodge or when he left the scene. The story does not end at that point. It did not  
14 end at that point in the prior sweat lodge ceremonies nor did it end at that point on October 8,  
15 2009. In fact, at the moment Defendant emerges from his ceremony in 2009, Kirby Brown and  
16 James Shore were dying and many other participants were in serious life threatening medical  
17 distress. Nine days later, Liz Neuman died. Defendant's attempt to downplay this fact should not  
18 succeed.  
19

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21 "[E]vidence of prior bad acts, another offense or misconduct, is admissible to show the  
22 complete story even though other prejudicial facts are revealed thereby." *State v. Lamar*, 144  
23 Ariz. 490, 497, 689 P.2d 735, 742 (1984) (citing *State v. Johnson*, 121 Ariz. 545, 592, P.2d 379  
24 (1979). See also *State v. Myers*, 117 Ariz. 79, 85, 570 P.2d 1252, 1258 (1977) ("Evidence of other  
25 crimes can be admitted when it is so interrelated with the crime with which the defendant is  
26 presently charged that the jury cannot have a full understanding of the circumstances without

1 such evidence.” (citing *State v. Foggy*, 101 Ariz. 459, 420 P.2d 934, cert. denied, 386 U.S. 1025,  
2 87 S.Ct. 1386, 18 L.Ed.2d 468 (1967)).

3 **II. The actions and statements of JRI employees and volunteers are relevant and admissible.**

4 Defendant asks this Court to preclude evidence relating to the conduct and statements  
5 made by JRI employees and volunteers, arguing this evidence is inadmissible because the jury  
6 might impute the conduct to Defendant. The Defendant’s position is without merit. Preclusion of  
7 this relevant evidence by this Court would severely limit the State’s ability to present the  
8 complete story to the jury. As noted above, the jury needs to hear the complete story of what  
9 occurred at the 2009 and prior Spiritual Warrior events; this includes the actions and statements  
10 of all of the participants, including JRI employees and volunteers.

11 Defendant cites no authority that supports his effort to have the State try this case in a  
12 vacuum, excluding the statements and actions of JRI employees and volunteers, based on a  
13 speculative claim that the jury might impute them to Defendant. Much of the conduct the  
14 Defendant seeks to preclude, such as when the dream team member encouraged or pushed a  
15 woman to re-enter the sweat lodge, occurred in the presence of Defendant while he was seated at  
16 the entrance to the sweat lodge. This conduct goes directly to Defendant’s knowledge and mental  
17 state. The fact that Defendant’s staff refused to call 911 without first checking with him is  
18 extremely relevant to show the jury the extent of control Defendant exercised over the event.

19 At trial, the State will prove that Defendant is James Ray International; that Defendant  
20 carefully orchestrated all of his events down to the last details; and that Defendant specifically  
21 created his own version of all of the events at Spiritual Warrior including the Samurai Game, the  
22 Vision Quest and the Sweat Lodge Ceremony. The State will further prove that Defendant’s staff  
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1 and the volunteers were all present at Spiritual Warrior to ensure Defendant's event went exactly  
2 as Defendant planned.

3 **A. The JRI Employees and Volunteers were acting as Defendant's Agent.**

4 Statements by JRI employees and volunteers are relevant and non-hearsay pursuant to  
5 Rule 801(d)(2)(D) of the Arizona Rules of Evidence. That rule provides that a statement is not  
6 hearsay if it is offered against a party and is a statement by the party's agent or servant  
7 concerning a matter within the scope of the agency or employment, made during the existence of  
8 the relationship. "The proponent of evidence under Rule 801(d)(2)(D) must show only that the  
9 statement: (1) was made by the opposing party's agent or servant, (2) was made during the  
10 existence of the relationship, and (3) concerned a matter within the scope of the agency or  
11 employment." *Shuck v. Texaco Refining & Marketing, Inc.*, 178 Ariz. 295, 299, 872 P.2d 1247,  
12 1250 (App. 1994). In order for a statement to be admissible pursuant to the rule, "there must be  
13 independent proof of an agency relationship and its scope." *State v. Frustino*, 142 Ariz. 288, 294,  
14 689 P.2d 547, 553 (App. 1984). The rule also applies to the admissibility of the conduct of the  
15 agents. See *Frustino, Id.* at 294-295, 689 P.2d at 553-554.

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17  
18 Clearly Rule 801(d)(2)(D) applies to the statements of the James Ray International  
19 employees and the volunteers or "Dream Team" members. Attached as Exhibit C is a copy of the  
20 Dream Team Expectations for Spiritual Warrior. The first sentence admonishes Dream Team  
21 members to: "Be aware that at all times you are representing James and JRI." *Exhibit C at Bates*  
22 *No. 2504*. The remainder of the document shows the Dream Team had specific duties during  
23 Spiritual Warrior that were performed at the direction of Defendant. Based on the above, to the  
24 extent that they are relevant, the conduct and statements of JRI employees and Dream Team  
25 members are admissible as statements by a party opponent under Rule 801 (d)(2)(D).  
26



1 **Conclusion**

2 Contrary to the argument set forth in Defendant's motion, the evidence he seeks to  
3 exclude is extremely relevant to Defendant's mental state and to present the complete story to the  
4 jury, not just the bits and pieces selected by Defendant. To the extent that the evidence is  
5 prejudicial, any prejudice is not substantially outweighed by its clear probative value. For the  
6 reasons stated above, this Court should deny Defendant's motion.  
7

8 RESPECTFULLY submitted this 6<sup>th</sup> day of January, 2011.

9  
10 By Sheila S. Polk

11 SHEILA SULLIVAN POLK  
12 YAVAPAI COUNTY ATTORNEY

13 **COPIES** of the foregoing emailed this  
14 6<sup>th</sup> day of January, 2011:

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SUPERIOR COURT OF STATE OF ARIZONA  
COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

CASE NO. VCR1300CR201080049

TRANSCRIPT OF INTERVIEW

Witness: Dr. Mark Fischione

By: Truc T. Do & Luis Li

Present: Bill Hughes, Steve Sisneros

Date: 06-17-2010

Length: 1:11:03 hours

Exhibit A

Excerpt from Transcript of Interview  
Dr. Fischione, 6/17/10

1 go out and they basically are my eyes and my ears. They take  
2 photographs at the scene, they talk with different agencies, they talk with  
3 the family, they talk with the people, maybe friends, they talk with  
4 hospital personnel if the person did die at the hospital, then they generate  
5 their report and I have that report before I go down and do my autopsy.  
6 DO: Alright. Is that . . . okay you said symptomology . . . is symptomology  
7 something different?  
8 FISCHIONE: Symptomotology.  
9 DO: Symptomotology.  
10 FISCHIONE: Right.  
11 DO: Okay, what is that?  
12 FISCHIONE: Symptomotology is and, because your question that you asked me when I  
13 . . . when I responded was "how do you make that determination of heat  
14 stroke?" and the first thing I said was I would base it on the  
15 symptomotology. Now my patients don't have symptoms by the time I  
16 get to them, especially if they're deceased at the scene, so therefore, once  
17 again, I have to defer back to what was . . . what did the family tell me?  
18 What did the ER physician tell me if this person was alive at the time? Or  
19 unconscious at the time -- if they took a temperature and it was 104, that  
20 tel . . . that helps out, that's a symptomotology. Okay. If, if by the family  
21 members saying that he was convulsing, that he was disoriented, altered  
22 mental status, nausea, vomiting, muscle contractures, all of these are  
23 symptoms of heat stroke.  
24 DO: Anything else?  
25 FISCHIONE: Oh boy I'd have to see your list. (laughs)  
26 DO: I (inaudible)  
27 FISCHIONE: I went through them so fast.  
28 DO: . . . we could start over.

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SUPERIOR COURT OF STATE OF ARIZONA  
COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

CASE NO. VCR1300CR201080049

**TRANSCRIPT OF INTERVIEW**

Witness: Dr. Robert Lyon

By: Truc T. Do and Luis Li

Present: Bill Hughes & Det. Ross Diskin

Date: 06-17-2010

Length: 45:00 minutes

Exhibit B

Excerpt from Transcript of Interview  
Dr. Lyon, 6/17/10

1                   that the cause of death was heat stroke. Is that correct?

2   LYON:           Correct.

3   DO:             In your medical opinion, is there, because we've heard these terms sort of

4                   thrown around, your medical opinion is there a distinction between heat

5                   stroke and hyperthermia?

6   LYON:           Yes.

7   DO:             Can you explain to me the difference between the two?

8   LYON:           Hyperthermia is an elevated body temperature. Heat stroke is a potentially

9                   fatal condition resulting from elevated body temperature.

10   DO:            What is that elevated body temperature for hyperthermia?

11   LYON:           Anything above normal.

12   DO:            That entire range? Anything above normal?

13   LYON:           Correct.

14   DO:            So then what distinguishes hyperthermia from heat stroke is that you have

15                   hyperthermia that results in death?

16   LYON:           That and symptoms.

17   DO:            What are those symptoms?

18   LYON:           Nausea, vomiting, high heart beat, high respirations, low blood pressure,

19                   altered mental status and death.

20   DO:            Okay. So are those your diagnostic criteria for heat stroke that you've just

21                   given me. An elevated body temperature, the symptoms including nausea,

22                   vomiting, fast heart beat, low blood pressure, altered mental status?

23   LYON:           Those are what are seen in heat stroke. In this case there is the scene, the

24                   circumstances, the medical records, witnesses. All play a part in coming

25                   to a diagnosis of heat stroke.

26   DO:            Okay. What I'm getting at first before we get into the circumstances of

27                   the scene and witness statements, what are the medical criteria you used to

28                   diagnose for heat stroke?



# Dream Team Expectations

**Represent James Ray International:**

Be aware that at all times you are representing James and JRI. Always be courteous, respectful and professional with everyone.

**Create an Environment for Growth and Learning:**

There must be no talking on the side. Keep an eye on James and the participants in case they need your assistance. Serve the needs of our participants. For example: answer their questions, take trash from them, etc. Ensure there is NO auditory noise while James is telling a story.

Only fill water and clean during breaks or exercises. Do not walk around the participant area of the room unless you are answering a question or bringing a mic to a participant.

Never touch or distract a participant (e.g., hand out a tissue) when James is working with him or her.

Remember, you are here to support the event. If someone asks for your business card, convey to them that your focus during the event is to support them in all activities related to the event experience and you do not believe it is appropriate to distract them from this purpose.

**Follow the Syntax:**

The syntax is a detailed schedule of the event. Follow along closely to ensure that you are aware of the times when you are expected to perform your assigned responsibilities. We strongly encourage you to study it before the event begins to ensure that you are very familiar with your responsibilities.

**Be Present:**

Stay focused on what is going on in the room. (Taking notes is okay, but know the difference between being a participant and being a team member.) When James is speaking, be still, attentive and focused. If participants are active or disruptive, quiet them by communicating to them the state of the room (e.g., "James is working one on one with a participant").

You must be in the room during breaks, exercises and

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recapitulation times. We take our breaks outside of participant breaks. Take biology breaks while James is teaching. Let someone know when you leave and for how long you'll be gone.

**Share Your Experiences:**

During breaks and sometimes even during session, participants will be interested in resources and event experiences. Be aware, alert and ready to answer questions, help describe resources and share your event experiences.

**Attend the Team Meetings:**

Each morning and at some breaks we will have a brief Dream Team Meeting to review the upcoming activities.

**Get Back on Your Feet Quickly:**

After breaks, get participants back in the room quickly.

**Help at the End of the Event:**

The team will need assistance packing the supplies and products. Please stay behind to help, but wait for specific instructions before beginning.

## **ROOM SET-UP**

**Keep Doors Closed:**

Keep doors closed before, during and at breaks of session. We need participants to remain out of the room any time we are not in session. We will place "Stop" signs on doors; please help monitor them also. We want to keep the room energy "HOT."

**Manage Seating:**

Please help to straighten the seats at every break to ensure that the energy of the room is kept condensed.

**Monitor Temperature:**

To remain as cool as possible at all times.

## **LOGISTICS**

**First Aid:**

There will be a first aid kit at the JRI Team table. If a participant or dream team member experiences an injury, please assist him or her and immediately notify a JRI Team Member of the incident.

**Photography/Recording:**

Photography and recording are not allowed by participants in the room at any time during the session. Please help us reinforce this.

**Forms:**

ALL lines on ALL forms are important. Please help

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us ensure that all forms are filled out completely, accurately and legibly.

## **PARTICIPANT SUPPORT**

- Collapsing the Wave Function:** You will assist participants with their processes throughout the event, day and night. Keep your notes with you at all times.
- Yoga:** You will support your fellow Dream Team member who leads the yoga class and assist the participants with yoga. You must be present for all yoga classes. If you are a yoga leader, remember to do the basic yoga exercises from James and keep it simple. It is important to begin and end the sessions on time.
- Breathwork:** Participants will experience the breathwork process. After this they will be processing what happened. Be sensitive and respectful of their needs. Be quiet in your own conversations. Keep the noise to a minimum. Be alert and ready in case they need your support.
- Samurai Game:** Your role during the game will be "Angel of Death." Please stay in the role by being solemn and somber. There is no need to lift the participants who "die". Simply help them to get up and guide them to the "graveyard". As you pass by participants, remember to maintain silence.
- Vision Quest:** Know the spots that you are responsible for. You must be able to find them in the dark and in silence. So practice walking to and from these as often as you can. Do NOT go out to visit anyone who is on the Vision Quest. When you pick up participants, make sure you take the scripts with you and remember to remain silent.
- Sweatlodge:** You will assist participants as they enter and exit the sweatlodge. If you are inside the sweatlodge, you must remain alert and ready to help the entire time. If you are outside the sweatlodge, be present and ready to quickly and immediately do what is necessary to assist anyone coming out of the sweatlodge.
- Conference Calls:** Participants will fill out a Warrior Group Call List so they can exchange contact information and get to know their support staff. Please ensure that participants fill out these forms and return them to you. They will record their

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group's contact information in their note books.

Instruct each group to select a leader and guide the leader in how to set up conference calls for the group. The leader will lead the calls. The groups will participate in conference calls for the next 8 weeks.

It is very important that you support your groups with any question or concerns during the 8 weeks. If you support your groups as required and we receive positive feedback regarding your performance, we will reward you with mana money for this event.

**Silence:**

When participants are in silence, please be respectful of this. Ensure that you're mindful of your environment and demeanor at all times.

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